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Case No._____

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In the
SUPREME COURT OF THE UNITED STATES
October Term 1997

MARVIN D. TOM
MARLA J. TOM,
Petitioners
v.
COMMISSIONER OF INTERNAL REVENUE
LISA C. BROWN,
CAROL RANDALL,
JOSEPH H. CLOONAN,
NANCY J. AIELLO,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR
THE FOURTH CIRCUIT
(RICHMOND, VA)

PETITION FOR A WRIT OF CERTIORARI

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45 pp

QUESTIONS PRESENTED FOR REVIEW

This case involves the very important issue of whether the "collection" of an "internal revenue tax" can be enforced when no "internal revenue tax" liability actually exists in the tax statutes themselves for a specific class or group of citizen. The key question that stems from this is whether the petitioners have a legal liability to file and pay an "internal revenue tax" known as the "individual income tax" in Title 26 USC, Subtitle A, based on statutes and implementing regulations passed by the U.S. Congress which do not come into conflict with or contradict the taxing clauses of the U.S. Constitution. If so, where is the legal evidence and how and why does it apply to the petitioners? The questions posed below for review stem from and are subordinate to the key question posed above.

1. Do "legal internal revenue tax" liabilities arise from statute only, or can they arise from government deception and extortion? If so, how and where is the actual legal evidence to support it?

2. Does the filing of an IRS 1040 Form prove that an indirect excise tax known as the "individual income tax" is legally being filed and paid? If so, where is the statutory proof?

3. Does the mere fact that the IRS is involved in the petitioners' case or situation prove or provide evidence in and of itself that "internal revenue taxes" are being legally "assessed" and "collected"?

4. If "internal revenue taxes" are not "assessed" according to the law, are "internal revenue taxes" actually being collected, and are the sums of money demanded legally due and owing? If so, why?

5. Are "rights" legally taxable? If so, where is U.S. Constitutional (and state Constitutional) evidence that allows the U.S. Government to tax the peti-

tioners' "right" to go out and exchange their property known as "labor" for other property known as compensation, salaries, wages, commissions, etc..., without these properties being taxed by the U.S. Government--as the taxing of "rights" destroys those rights?

6. Can the U.S. Government legally and Constitutionally tax both the "income" and the "source of that income" at the same time if the "source of the income" is not "taxable" by law or tax regulations?

7. If property other than that listed as legally subject to seizure and forfeiture in the Internal Revenue Code, Title 26 USC, is confiscated, can the IRS legally keep it and use it to pay some "internal revenue tax" that the IRS cannot legally prove in the law specifically is owed to them in the first place?

8. If IRS agents are operating outside the scope of their employment and official capacity in the "collection" of sums of money from the petitioners, what proof is there that they (IRS agents) are collecting an "internal revenue tax" from the petitioners?

9. Is the Withholding Tax an indirect excise tax known as "income tax"? If so, where is the legal proof?

10. Can the IRS use a form designed to collect "employment tax" (W-4 Form) to deceptively coerce and intimidate "employers" (public or private) into withholding an "income tax" from their "employees" instead (when "income tax" can have a rate 10 times as much as the rate for employment tax--7%)?

11. Whose income is liable for the "income tax"?

12. Is there a "general income tax" in the 50 states of the USA, or does a citizen have to be involved in a "taxable activity" in order to generate "taxable income"?

13. Are the IRS agents required to explain, if asked,

the numbers and codes in our "Individual Master File" in IRS files under our name and Social Security Numbers?

14. What "sources" of income are legally taxable?

15. What "activities" are taxable with respect to the indirect excise tax known as "income tax"?

16. What property is subject to seizure and forfeiture when a specific related "type of income tax" is not paid when it is legally due pursuant to the tax statutes?

17. Where is the "assessment" of specific types of "income tax" legally enforced (in what Title of law)?

18. What is a "legal assessment" of "income tax"?

19. If a federal judge is ignorant of tax law requirements, does he/she have the legal right to make legal decisions adverse and injurious to a court litigant as to whether a litigant or petitioner has "tax liabilities" or other legal tax obligations under the Internal Revenue Code?

20. If no "internal revenue tax" liability is established in the Internal Revenue Code (Title 26 USC) specifically applicable to the petitioners, can IRS agents ignore this and file a "Proof of Claim" Form 6338(C) in the petitioners' Bankruptcy Case (Chapter 7) demanding payment of sums of money from the petitioners for an "internal revenue tax" liability that does not exist in the tax laws (Title 26 USC) specifically applicable to the petitioners?

21. Is the 1040 Form a legal "tax return"? If so, for which "internal revenue tax"?

22. Can IRS agents demand that the petitioners file "internal revenue tax" forms, such as the 1040 Form, that is not required by law specifically applicable to the petitioners? If so, which legal lawful law(s) authorize it?

23. What "taxable activities" are legal levies exclusively associated with?
24. What true legal subject is the focus of a Levy by Distraint under the Internal Revenue Code?
25. Does a "legal levy require a court-ordered Warrant of Distraint (or Writ of Execution) in order for it to have the full force and effect of the law and have the protection of the law? If not, where is the lawful Congressional statute(s) and regulation(s) that authorize it (do not contradict or conflict with the U.S. Constitution)?
26. What documents does a "levy" require in order to be legal according to the regulations themselves, and not just because a U.S. Government agent says so?
27. Do "legal levies" authorize the issuance of "Notice of Levy" Form 668-A(c), 668-W, etc... to third parties by IRS agents for "levy" enforcement by the third party (of petitioners' property) who is usually ignorant of the tax laws, and where the IRS agents provide no evidence that the "internal revenue tax" is legally owed specifically by the petitioners (or persons who are the target of an "alleged tax levy" attack)?
28. If a form not legally a "return" was filed, and an "assessment" not legally done pursuant to the tax statutes and regulations themselves was claimed to have been done by IRS agents (to allegedly make it legal), does the statute of limitations for legal "tax assessments" within 3 years after the "return" (legal "return", not just a worksheet) was filed still apply, or does this prove that no "tax assessment" has taken place, and therefore, no "tax collection" can legally take place, and finally that no "internal revenue tax" is being collected at all by IRS agents?
29. Does a legal "Levy by Distraint" require a legal Notice of Seizure to first be obtained and issued to the party whose property has legally become subject

to seizure and forfeiture? If not, what tax regulations authorize the legal confiscation of property without the legal Notice of Seizure first being obtained and issued?

30. What assurance and proof do citizens have that IRS agents are operating within the scope of their employment and official capacity when they conduct "levy by distraint" procedures against citizens of the 50 states of the USA, and what proof do citizens have that IRS agents even know the tax statutes and their regulations at all--let alone to be able to administrate them and apply them legally only to those groups or classes whom they apply to?

31. Can "penalties" apply to petitioners when they have no legal requirements to file and pay the indirect excise tax known as "income tax"?

32. What is "income tax" evasion?

33. What is an "internal revenue taxpayer"?

34. What does it mean to be "tax exempt"?

35. How is a direct tax and an indirect tax legally collected? What is the difference in the collection methods?

36. What is the difference between a "tax" and a "debt"?

37. Where does money collected by the IRS under the guise of "income tax" actually go?

38. Do the petitioners have a "contract" with the IRS or the U.S. Department of the Treasury that obligates them legally to pay an indirect excise tax known as "income tax" to the IRS even though they are not involved in any "taxable activities"?

39. What Treasury does the Secretary of the Treasury actually work for?

40. Where does the Commissioner of Internal Revenue have jurisdiction?

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Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT (RICHMOND, VIRGINIA)

Marvin D. Tom and Marla J. Tom petition for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit (Richmond, Virginia) entered in this case on February 3, 1998.

OPINIONS BELOW

The opinion of the Court of Appeals is unpublished and is reproduced in the appendix hereto at page 1 (A1).

The Opinion of the U.S. District Court (A6) that was upheld by the court of appeals is unreported. Orders of the court of appeals denying a petition for rehearing and a suggestion for rehearing in banc, both entered on April 13, 1998 (A4) are unreported or affirmed by unpublished per curiam opinion. Also denied by the court of appeals in the same Order of April 13, 1998 was the appellants' Motion for a Permanent Restraining Order, a Notice of Automatic Default, and a Motion for Summary Judgment and Affidavit of Probable Cause for Criminal Activity. Other opinions of the district court in this case are also unreported.

JURISDICTION

The judgment of the court of appeals was entered on February 3, 1998, and the petition for rehearing was denied on April 13, 1998. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

This case involves the application of many statutes and implementing regulations of Title 26 USC/CFR. The key statutes in this case which would help determine whether an "internal revenue tax" liability actually exists in the law specifically applicable to the petitioners, would be the statutes which specify how a legal "tax assessment", "tax collection", "tax lien" and "tax levy", "tax audit", "tax deficiency", (and other tax-related items) is to be

legally handled and conducted by IRS agents. It is important to point out here that Title 26 USC statutes and their regulations can be used to prove that either the petitioners have a specific "internal revenue tax" liability or they do not. The mere mention of Title 26 USC in this document does not prove in and of itself that this is an "internal revenue tax" case for the purpose of the applicable collection of an "internal revenue tax" from the petitioners. Just the opposite is the case with the petitioners' petition. Among the applicable statutes associated with this petition are the following:

Title 26 U.S.C. Section 1
Title 26 U.S.C. Section 61
Title 26 U.S.C. Section 861
Title 26 U.S.C. Section 1441
Title 26 U.S.C. Section 1442
Title 26 U.S.C. Section 1443
Title 26 U.S.C. Section 1461
Title 26 U.S.C. Section 3402
Title 26 U.S.C. Section 6001
Title 26 U.S.C. Section 6011
Title 26 U.S.C. Section 6012(a)
Title 26 U.S.C. Section 6201
Title 26 U.S.C. Section 6203
Title 26 U.S.C. Section 6211
Title 26 U.S.C. Section 6212
Title 26 U.S.C. Section 6301
Title 26 U.S.C. Section 6303
Title 26 U.S.C. Section 6321
Title 26 U.S.C. Section 6331
Title 26 U.S.C. Section 6335
Title 26 U.S.C. Section 6404
Title 26 U.S.C. Section 6501(c)(3)
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Title 26 U.S.C. Section 7301

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Title 26 U.S.C. Section 7608
Title 26 U.S.C. Section 7701(a)(16)
Title 26 U.S.C. Section 7806
Title 26 U.S.C. Section 7851
Title 26 U.S.C. Section 3670*
Title 26 U.S.C. Section 3671*
Title 26 U.S.C. Section 3691*
Title 26 U.S.C. Section 3692*
Title 26 U.S.C. Section 3611*
Title 26 U.S.C. Section 3640*
Title 26 U.S.C. Section 3661*
*1939 Internal Revenue Code

* * * * *

U.S. Constitution, 16th Amendment
Art. I, Sec. 2, Cl. 3
Art. I, Sec. 9, Cl. 4
Art. I, Sec. 8, Cl. 1

* * * * *

Many of the other Titles of the United States Code have applicability to this case, but the statutes are too numerous to mention. Finally, there are many state statutes and regulations that are being violated by the actions of the IRS agents against the petitioners. The events which illustrate this are enumerated in the Statement and Facts of the Case.

STATEMENT AND FACTS OF THE CASE

1. In February 1992, the IRS agents at the Baileys Crossroads, Virginia IRS Office notified the petitioners that an audit of a Form 1040 was being planned for the year 1989. The petitioners agreed to meet with the auditor who notified them to see what the agents wanted. However, when the meeting took place, the IRS agent would not answer any

of the petitioners' important questions such as whether the information sought was voluntary or mandatory, whether the information could be used against the petitioners later in a court of law, and what "internal revenue tax" the agent was attempting to collect and how and why the petitioners legally owed it. So the meeting was adjourned without the petitioners agreeing that any more money was owed to the IRS (by way of a signature on an appropriate document). Without any evidence (applicable statute/regulations), the IRS agent determined that a "deficiency" existed for 1989, and eventually for 1990 and 1991 by way of reexamination reports. The rationale given to the petitioners for the "deficiencies" was that the IRS agent was going to simply deny all expenses in the attempt to generate a "net profit" (in small business of Mr. Tom) and treat them as if they were "income" instead. So the examination report reflected the total amount of the expenses for each of the three years in question, and how the IRS agent had transformed the "expenses" into "income" for the three years in question, and then had attached a 30% "tax" on to the "alleged income", and some additional interest and penalties. The action by this IRS agent was so ludicrous that it left us speechless. What the agent was saying by his actions was to deny all "expenses" necessary to generate "income" in a business. If this was legally correct, then all businesses ever started in the United States, and all businesses currently operating in the United States should all be out of business then because the IRS does not allow them to have any "expenses" to generate any "income". This ludicrous illegal action by these IRS agents in the Baileys Crossroads, Virginia IRS Office is what forced the petitioners to file a Chapter 7 Bankruptcy Case in September 1993.

These audit and examination procedures conducted against the petitioners were the first in a long line or list of illegal criminal procedures and misapplications of tax laws conducted against the petitioners since February 1992 up to the current date of June 1998. To illustrate, in this first event (listed as Item #1), the petitioners are not subject to any audits for the following reasons:

a) An IRS W-4 Form which was on file by one petitioner, and the other petitioner was a domestic company during the three years in question, and the W-4 Form pertains to employment tax legally, and not "income tax". The employment tax is a direct tax on wages subject to the law of apportionment, is based on the social security system, and is not subject to audits, reexaminations, deficiencies, liens, levies, interest, fines, etc.... (26 CFR 31.3402). The "income tax" is an indirect excise tax, subject to the law of uniformity, is not based on the social security system, and if one is involved in "taxable activities" to generate "taxable income", and the corresponding type of "income tax" is not paid on those taxable goods, then the person involved can be subject to audits, reexaminations, deficiencies, liens, levies, fines, etc.

b) The employment tax is implemented and collected using the law of apportionment, and because this important law is not being utilized in the collection of this "internal revenue tax" or direct tax on wages, the employment tax is not being collected from the petitioners by the IRS either. Therefore, neither the "income tax" nor the employment tax are being collected by the IRS from the petitioners.

c) Since sums of money were being collected from the petitioners by those organizations that they worked for during the three years in question to

give to the IRS, and the fact that the money was all being collected from the petitioners by the organizations before it was statutorily due, before "expenses" could be subtracted out to calculate "net profit" and before "taxable income" based on "taxable activities" could be calculated and determined all prove conclusively the "income tax" was never being collected from the petitioners at all during the three years in question--1989, 1990 and 1991--or for that matter, ever in our lifetime of work.

d) The petitioners have never had a status in their entire lifetimes which would create an actual "internal revenue tax" liability in the law, Title 26 USC. According to the law in Title 26 USC an "income tax" liability for the following classes or groups of people is established: (1) nonresident aliens (Section 1441); (2) foreign corporations (Section 1442); (3) foreign tax-exempt organizations (Section 1443); (4) withholding agents (Section 1461); (5) persons or citizens involved in taxable alcohol, tobacco or firearms activities under Subtitle E with enforcement regulations in Title 27 CFR. The above classes or groups have never applied to the petitioners with respect to the three years in question (1989, 1990 and 1991), nor have they applied to the petitioners during their entire lifetimes. These and many other reasons prove that the petitioners are not subject to audits for "income tax" because it is not and never has been "income tax" that the IRS has ever been collecting from the petitioners through the organizations that the petitioners have worked for. The mere involvement of the IRS in this situation is not proof, in and of itself, that the IRS is collecting any "internal revenue tax" from the petitioners. "Substance" supersedes "form" in the law, otherwise, this would be an admission by the IRS, the U.S. Congress, and the judiciary

system officers that "tax liabilities" arise from fraud, extortion, embezzlement, larceny, tyranny, racketeering, mail fraud, deprivation of property under color of law, etc... rather than the "tax liabilities" arising from statute, which is according to the tax laws. Otherwise, it would also be an admission that we actually have tyranny and anarchy in the United States right now instead of a strict adherence to the U.S. Constitution, the supreme law of the land, which is under the Supreme Laws of God, of course.

2. In September 1993, the petitioners were forced into bankruptcy because of the criminal misapplication of tax laws by the IRS agents against the petitioners. The "Proof of Claim" Form 6338(C) that the IRS agents (in Richmond, VA) filed in our bankruptcy case had many problems with it. Some of the many problems were: (a) the IRS "Proof of Claim" Form 6338(C) was fraudulent on its face in that it was based on an "internal revenue tax" liability that did not and does not exist in the law itself specifically applicable to the petitioners; (b) the 6338(C) Form is not the legally required form to file as a Proof of Claim form in a bankruptcy case, Chapter 7. All of the other creditors in the bankruptcy case filed a B-10 Form and provided all required information on it. c) The IRS agents provided none of the legally required information on their 6338(C) Form; d) the information that the IRS did provide on the form was not legally verified and authenticated as to its correctness and legality as required by law (Title 26 USC, Sections 6061 and 6065 and their regulations); e) the 6338(C) Form had an illegible signature and there was and is no evidence that the IRS Division next to the illegible signature had the authority to send out the very damaging and injurious "Proof of Claim" Form 6338(C) which literally violated thousands of statutes in the Internal

Revenue Code against the petitioners. These IRS agents are rogue criminal agents operating outside their official capacity and authority and violating thousands of tax laws as well as many statutes from many of the other Titles of the United States Code, against the petitioners and no one is making them account for their crimes against the petitioners. So far, the judicial system officers have made a mockery out of the judicial system and have done nothing but harbor and insulate and protect the actual criminals from any accountability and responsibility, from any justice or due process of law by legal maneuvering and deception using secret selective procedures which have nothing to do with the actual tax statutes and their implementing regulations. Either the law applies to the petitioners or it does not as all laws have limitations and only apply if you do something that brings you under the language of a particular statute and regulation. The two Federal courts that this case has been in so far have done nothing but deny everything that would reveal and bring out the truth so that justice and the due process of law could prevail, and the guilty could be punished so that they could not destroy many more lives in the future, but the petitioners believe that the courts really do not want that. Their actions prove it.

On February 15, 1994, the petitioners' bankruptcy case was discharged and all debts were discharged. Because the IRS could not prove that the sums of money that they claimed on their "Proof of Claim" Form 6338(C) were "income tax" or any other "internal revenue tax", but were merely extortion and embezzlement payments demanded through fraud and deception in reality and substance, all of the sums that they claimed on their "Proof of Claim" Form 6338(C) were discharged as if

they never existed, because the petitioners cannot pay a "debt" that they never owed legally in the first place. Either "tax liabilities" arise from statute, or they arise from fraud, extortion, embezzlement, grand larceny, mail fraud, illusion and smokescreens, etc... Which is the U.S. Government saying that it is? What "privilege" is the income tax measured against because "rights" are not legally taxable? Right now, the IRS agents are illegally confiscating our property and destroying our Constitutional right to go out and exchange our property (our labor) for another form of property called wages, salaries, commissions, etc... which is compensation for labor, and not "income" which is a "profit or gain from a source"--without the IRS illegally destroying those rights through a deceptive obscure "taxation scheme". A "tax" is imposed through legislative authority, but the IRS agents have yet to provide and prove the legislative authority that imposes the "income tax" on the petitioners or any other "internal revenue tax" in Title 26 USC.

3. In August 1995, the IRS agents' next move was to provide fraudulent, unfounded, unsubstantiated information to the Virginia Department of Taxation, which that Department then used to issue and file a "Notice of Tax Lien" document in the Fairfax County Courthouse on November 23, 1994, and then conduct an illegal fraudulent wage confiscation procedure through the payroll office of Marla Tom's work organization from August 1995 through March 1996 to steal funds never owed legally in the first place. This procedure conducted by the Virginia Department of Taxation based on IRS information (during which nearly $5,000 was illegally stolen) was fraudulent on its face once again because neither the IRS nor the Virginia Tax Dept-

ment provided any evidence (when repeatedly asked) as to what "internal revenue tax" the petitioners legally owed based on statute and regulation, and how and why they owed it both to the IRS and the Virginia Department of Taxation. If it is "income tax" that the IRS (and the Virginia Department of Taxation) is attempting to collect, then the IRS is taxing what it will not define--"income"-- because the IRS knows that if they reveal the truth about it then the public would know that they legally do not owe it. Additionally, the term "income" is not defined in the Internal Revenue Code--yet the IRS is taxing it. The IRS has yet to answer the question of what "profit or gain from a source" did the petitioners have during the years of 1989, 1990 and 1991? The IRS' complete failure to answer this question is further proof that the IRS is merely collecting sums of money from the petitioners under the guise and smokescreen of "internal revenue tax" collection without any authority whatsoever. More fraudulent "Notice of Levy" Forms 668-A(c) were issued and sent to the petitioners and third parties (credit union and petitioner's payroll office) to have the third party enforce the fraudulent documents, because the IRS knows that they cannot obtain all the necessary legal documentation and prerequisites to obtain a legal Court-ordered Warrant of Distraint (Judgment) to legally support a "legal levy" under Section 6331 of Title 26 U.S.C. themselves, so they bring in third parties who are ignorant of tax law to act as accomplices for their crimes. The third party "accomplices" turn over stolen property to the IRS, not legally levied wages, and other property. Third parties are criminally liable, however, if they turn over property before they have IRS documents verified and authenticated legally (Title 26 CFR

301.6332-1(c)). The IRS issued and sent to petitioners as well as third parties holding petitioners' property several "Notice of Levy" Forms 668-A(c) during 1996 and 1997, as well as file bogus "Notice of Federal Tax Lien" forms against the petitioners in the Fairfax County Courthouse. All of these documents are fraudulent because they are all based on nonexistent "internal revenue tax" liabilities for the reasons stated in this petition.

Proceedings in the District Court

4. The petitioners filed a suit in the U.S. District Court for the Eastern District of Virginia, Alexandria Division on December 24, 1996. From the beginning of the case, the Justice Department attorney, the U.S. Attorney in the Alexandria office (Robert K. Coulter), and the judge presiding in this case (Judge T.S. Ellis, III) simply ignored all of the critical key issues in this case which were presented to the court by the petitioners in their legal affidavits and motions throughout the case. The U.S. Government's attorneys never even established whether the petitioners had "income", whether they had a legal "income tax liability", what "internal revenue tax" they were attempting to collect from the petitioners, and how and why the petitioners legally owed the one they assumed. The Government attorneys merely used the generic term "tax" in their court presentation. They never mentioned or brought up any of the legal issues which would help establish whether the petitioners actually have a legal "internal revenue tax" liability, and not some vague obscure obligation assumed by government fraud, extortion, embezzlement, larceny, and illusion and smokescreens. Some obvious key questions which were never brought up by the U.S.

Government or the court, but which were thoroughly developed along with legal evidence in the petitioners' legal affidavits and motions were issues such as the following: (1) What is "income" and whose "income" is subject to the "income tax"? (2) What "internal revenue tax" is the *Withholding Tax*? (3) Have the petitioners ever had a "legal tax assessment" or have they been maliciously victimized by massive U.S. Government criminal activity? (4) How do you qualify to be a "taxpayer" as defined in the Internal Revenue code, Title 26 U.S.C.? (5) Has the legal "collection" of an "internal revenue tax" by the IRS agents from the petitioners ever taken place? (6) What is the legally required form to file for the "general individual income tax" under Subtitle A of Title 26 U.S.C.? (7) Is the IRS 1040 Form a "tax return" and if it is, is it the legally required form to file to pay the "individual income tax"? (8) Can the petitioners be penalized and destroyed by the U.S. Government agents who illegally confiscate the petitioners' property (not "legal levies" or "wage garnishments") outside the scope of their employment and official capacity, when the petitioners have no legal requirements in Title 26 U.S.C. for an "internal revenue tax" liability in the first place? (9) Can the petitioners, who are not legally subject to the Internal Revenue Code, be forced to come under it by IRS agents using extortion, embezzlement, fraud, racketeering, fear and intimidation tactics, deprivation of property under color of law and malfeasance of office under color of law, mail fraud, third party grand larceny, Social Security fraud and criminal activity, denial of the U.S. Bill of Rights and the due process of law, etc...? (10) Is the "individual income tax" a voluntary kind of tax, or is it some other kind of "internal revenue tax" that is voluntary? If so, which one? (11)

If a particular "internal revenue tax" is imposed in the law, does that automatically mean that it is legally imposed on the petitioners specifically? If so, where is the legal proof? Do other legal references need to be checked first before this can be determined? (12) Where does the Commissioner of Internal Revenue have jurisdiction? Over the 50 states of the USA? None of these questions were even addressed by the U.S. District Court, as well as many more that are germane to determining a legal "internal revenue tax" liability. The U.S. Attorneys merely used sophistry and perversion, distortion, citing irrelevant, nonapplicable case references from circuit courts and lower, they cited nonapplicable tax statutes from the Internal Revenue Code such as Section 7421 (the Anti-Injunction Act which pertains to the legal "assessment" and "collection" of taxes, and not to IRS fraud and extortion, etc...) in their court documents and motions. The Judge just paralyzed all of the proceedings by denying everything without providing any legal evidence for any of his decisions. This has clearly been a case where truth about taxation and the law are not allowed in Judge T.S. Ellis' court at all costs. All that took place in the courtroom was legal maneuvering and secret selective procedures designed to evade the key issues which expose truth and law so that justice and due process of law will be denied. Examples of the sophistry and perversion that took place in the courtroom by the U.S. Attorneys and the Judge were the following deceptive devices: (1) attempts to remove all distinction between government employees and the government itself, invoking the doctrine of sovereign immunity. This is to say that the U.S. Attorneys wish the court to act as though the government employees themselves speak and act for the government without any distinction

between the two. If accepted, this "doctrine" would have the effect of removing all accountability for personal actions from the agents of government. (2) Attempts to interpret the Anti-Injunction Act so broadly as to deny any remedy at law, where any tax is applied to any individual, assessed in any amount, by anyone, for any purpose and by any means, excepting of course those prescribed by law. The Anti-Injunction Act was passed during the War Between the States to secure funds for the prosecution of the war by the North. Essentially, it provided that the courts could not take jurisdiction to enjoin a federal tax assessment. It did not contain any provision for agents of the federal government to collect taxes by means outside their scope of employment as prescribed by law--as is the case with the petitioners' case. (3) Attempts to exempt the IRS agents from any personal responsibility to adhere to the body of the law that defines their responsibilities. (4) Attempts to equate the failure of acquiring revenue in this specific instance with depletion of the public treasury. There were many other deceptive strategies used by them, but suffice it to say that any one of the above false presumptions would be offensive and absurd if taken by itself, but the application of them in combination is obscene. Judge Ellis quickly closed the case before any more truth could be exposed in his courtroom on March 20, 1997.

Proceedings in the Court of Appeals

5. More of the same denial of justice and the due process of law took place in the Court of Appeals for the Fourth Circuit (Richmond, Virginia). None of

the legal questions posed at the beginning of this petition and throughout it were addressed by the Court of Appeals, because it would clearly reveal that the petitioners have no "internal revenue tax" liability. It would also show that the IRS agents have been using "tax assessment and collection" procedures against the petitioners for the last 6 years that are not sanctioned and authorized anywhere in the law. Therefore, their actions are criminal and violate the entire Internal Revenue Code against the petitioners. The IRS agents' procedures have been criminal because they are violations of Congressionally-Mandated Procedures during the administrative assessment-collection process, constituting an unenforceable and *"illegal use of Liens and Levies"*, and a *"Denial of Due Process of the Law"*. No Treasury Department Delegation of Authority Order (TDO) has been issued, providing summons, assessment, lien or levy authority applicable to the petitioners or to any Citizen of the 50 Republic states. Treasury Department Order No. 150-42, dated July 27, 1956, 21 Fed. Reg. 5852 delegated the following authority to the Commissioner of Internal Revenue: "The Commissioner shall, to the extent of the authority vested in him, provide for the administration of United States internal revenue laws *in the Panama Canal Zone, Puerto Rico and the Virgin Islands*". On February 27, 1986, the Federal Register (51 Fed. Reg. 9571) published the following Treasury Department Order No. 150-01: "The Commissioner shall, to the extent of authority otherwise vested in him, provide for the administration of the United States internal revenue laws in the U.S. Territories and insular possessions and other authorized areas of the world". These areas include countries with which the U.S. has Tax Treaties in force and DO NOT include the 50

Republic States. There are many other reasons too numerous to mention, but more of them will be listed in the "Reasons for Granting the Writ" section of this petition. The Court of Appeals merely upheld all of the denials of the District Court and gave no reasons whatsoever for their denials and presented no legal arguments as to how the petitioners are wrong (in spite of the fact that they have no legal tax liabilities in this case for the years in question) and how the U.S. Court of Appeals is legally right--which violates thousands of federal and state laws.

The Per Curiam Statement or Opinion of the Court of Appeals decided February 3, 1998 by Circuit Judges Widener, Michael, and Motz, is a ludicrous atrocious blatant lie and gross perversion and distortion of the petitioners' original complaint affidavit filed in the U.S. District Court, Alexandria, Virginia, on December 24, 1996. Nowhere in the petitioners' Complaint does it state as the reason for seeking the actual and punitive damages the ludicrous fabricated reason stated in the Per Curiam Opinion by the U.S. Court of Appeals. All of the reasons stated in the petitioners' Complaint are the reasons for seeking damages, actual and punitive--not the ludicrous statement given in the Per Curiam Statement. To hide the truth, the court labeled this case an *"Unpublished Opinion"!*

REASONS FOR GRANTING THE WRIT

6. The writ should be granted because both of the lower courts in this case did not even address any of the key legal issues and questions in this case, and so basic justice and due process of law have been completely denied so far in this case, and no legal remedy based on the law itself has been provided to the petitioners. The IRS agents have

committed many criminal acts against the petitioners and have so far been illegally insulated and harbored by the U.S. Government and judicial system from any accountability for their crimes and actions as they ignore what the law actually requires. Here is a partial list of some of the actual legal requirements that are germane or key to this case:

a) "Income" is a "profit or gain from a source"--not on it. *Merchant's Loan and Trust Co. v. Smietanka*, 255 U.S. 509. On pages 518 and 519, the Supreme Court closed its paragraph on the meaning of "income" with this observation: "There would seem to be no room for doubt that the word "income" must be given the same meaning in all of the Income Tax Acts of Congress that was given to it in the Corporate Excise Tax Act of 1909 and that what that meaning is has now become definitely settled by decisions of this court." "Income" is profit or gain separated from its "source". The 16th Amendment " conferred no new power of taxation" on the Federal Government. *Stanton v. Baltic Mining Co.*, 240 US 103, 122; and so its taxing power "must still be construed in connection with the taxing clauses of the ORIGINAL CONSTITUTION and the effect attributable to them BEFORE THE AMENDMENT WAS ADOPTED". *Eisner v. Macomber*, 252 US 189, 205 (1929). "Taxes" that are imposed on the "source" are "Direct Taxes" and must be "apportioned as the Constitution requires." *Pollack v. Farmer's Loan & Trust Co.*, 157 US 429 (1895). "The income tax system is not based upon distraint (force)." *Flora v. U.S.*, 362 U.S. 145 176. *Blatt Co. v. U.S.* (1938) 59 S.Ct. 186. "Treasury regulations can add nothing to 'income' as defined by Congress." *James v. U.S.* 81 S.Ct. 1052 (1961). "It is the principle that the 16th amendment is to be taken as written and is not to be extended beyond the

meaning clearly indicated by the language used." "Income has been taken to mean the same thing as used in the Corporation Excise Tax of 1909 (36 Stat. 112). The worker does not receive a profit or gain from his/her labors--merely an equal exchange of funds for services. *Brushaber v. Union Pacific R.R. Co.*, 240 U.S. 1, 17, 36 S.Ct. 236, 241. "All laws, rules and practices which are repugnant to the Constitution are null and void." *Marbury v. Madison*, 5th U.S. 137, 180 (1803). "It is the duty of the courts to be watchful for the Constitutional rights of the citizen and against any stealthy encroachments thereon". *Boyd v. U.S.*, 116 U.S. 616, 635 (1885) and *U.S. v. Vadnar*. "Income" is not a wage or compensation for any type of labor, but is gains or profit from property severed from capital, however invested." *Stapler v. U.S.* 21, 737 at 739. "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them". *Miranda v. Arizona*, 384 U.S. 436, 491; 86 S.Ct. 1602. "Excises are taxes laid upon the manufacture, sale or consumption of commodities within the country, upon licenses to pursue certain occupations and upon corporate privileges." *Flint v. Stone Tracy Co.*, 220 US 107 (1911). "Representatives and direct taxes shall be apportioned among the several states..." U.S. Constitution, Art. I, Sec. 2, Cl. 3. "No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken." U.S. Constitution, Art I, Sec. 9, Cl.4. "The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States." U.S. Constitution, Art. I, Sec 8, Cl.1.

b) Who is liable for "income tax"? Withholding of money for income tax purposes, according to Section 7701(a)(16) is only authorized for Sections: 1441 - NONRESIDENT ALIENS, 1442 - FOREIGN CORPORATIONS, 1443 - FOREIGN TAX-EXEMPT ORGANIZATIONS, 1461 - WITHHOLDING AGENT LIABLE FOR WITHHELD TAX. Treasury Decision 2313 (dated March 21, 1916; Vol. 18, January-December 1916, page 53) states in part: "it is hereby held that income accruing to nonresident aliens in the form of interest from the bonds and dividends on the stock of domestic corporations is subject to the income tax imposed by the act of October 3, 1913." Persons involved in "taxable alcohol, tobacco or firearms activities" under Subtitle E Title 26 U.S.C., enforced by regulation in Title 27 CFR, Part 70.

c) "Assessment Authority"--Section 3640, Title 26 U.S.C. (1939 Code). "The Commissioner is authorized and required to make the inquiries, determinations, and assessments of all taxes and penalties imposed by this title, or accruing under any former internal revenue law, where such taxes have not been duly paid by stamp at the time and in the manner provided by law". The Court will take notice, ONLY TAXES NOT DULY PAID BY STAMP MAY BE ASSESSED. NO LAWFUL ASSESSMENT EXISTS AS TO PETITIONERS. The LIST OF TAXABLE GOODS IS THE "TAX ASSESSMENT"--not a 1040 Form. Title 26 U.S.C. Sections 3670 and 3671. The petitioners have never had any of the *Property Subject to Seizure and Forfeiture*, as required by Section 3720(a). Petitioners meet none of these requirements of law and many more could be listed but there is insufficient space to do it. Petitioners therefore have never had any "internal revenue tax" liability legally.

CONCLUSION

As neither lower court in this case has addressed any of the key issues in this case, and because none of the rights guaranteed to petitioners in the U.S. Constitution have been actually granted to petitioners, nor applicable law applied, the petition should be granted, and the lower court judgments or opinions denying everything without evidence should be summarily reversed.

Respectfully submitted,

Marvin D. Tom
Marla J. Tom

Marvin D. Tom
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APPENDIX

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 97-1587

MARVIN D. TOM; MARLA J. TOM,

Plaintiffs - Appellants,

versus

JANET RENO, Attorney General; HELEN F. FAHEY, United States Attorney; MARGARET MILNER RICHARDSON, Commissioner, Internal Revenue Service Headquarters; JOSEPH H. CLOONAN, Director, Philadelphia Internal Revenue Service Center; N. J. AIELLO, Chief, Collections Branch, Philadelphia Internal Revenue Service Center, UNITED STATES OF AMERICA,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. T. S. Ellis, III, District Judge. (CA-96-1820-A)

Submitted: January 22, 1998
Decided: February 3, 1998

Before WIDENER, MICHAEL, and MOTZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Marvin D. Tom, Marla J. Tom, Appellants Pro Se. Randolph L. Hutter, Annette Marie Wietecha, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C.; Robert K. Coulter, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Appellants appeal from the district court's orders dismissing their complaint in which they sought $16 million in damages for the alleged wrongful disclosure of return information in a notice of levy by the Internal Revenue Service, denying their motion for reconsideration, denying their motion for recusal of the district court judge, and denying as moot their motions filed after entry of the judgment. We have reviewed the record and the district court's opinions. Accordingly, we deny the Appellees' motion for the imposition of sanctions and affirm on the reasoning of the district court. Tom v. Reno, No. CA-96-1820-A (E.D. Va. Feb. 28, Mar. 4, 11, and 20, 1997). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
April 21, 1998

No. 97-1587

CA-96-1820-A

Tom V. Reno

MANDATE

The judgment of this Court dated 2/3/98 takes effect today.

PATRICIA S. CONNOR
CLERK

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Filed
April 13, 1998

No. 97-1587
CA-96-1820-A

MARVIN D. TOM; MARLA J. TOM
Plaintiffs - Appellants

v.

JANET RENO, Attorney General; HELEN F. FAHEY, United States Attorney; MARGARET MILNER RICHARDSON, Commissioner, Internal Revenue Service Headquarters; JOSEPH H. CLOONAN, Director, Philadelphia Internal Revenue Service Center; N. J. AIELLO, Chief, Collections Branch, Philadelphia Internal Revenue Service; UNITED STATES OF AMERICA
Defendants - Appellees

On Petition for Rehearing with Suggestion for Rehearing In Banc

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The appellants' petition for rehearing and suggestion for rehearing in banc were submitted to this Court. Also submitted were the motion for a permanent restraining order, a notice of automatic default affidavit, and a motion for summary judgment. As no member of this Court or the panel requested a poll on the suggestion for rehearing in banc, and As the panel considered the petition for hearing and the outstanding motions, and are of the opinion that they should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc, the

motion for a permanent restraining order, the notice of automatic default affidavit, and the motion for summary judgment are all denied.

For the Court,

/s/ Patricia S. Connor
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

Civil Action 96-1820-A

MARVIN D. TOM,
MARLA J. TOM,
Plaintiffs,
v.
JANET RENO, Attorney General
United States Department of
Justice, et. al,
Defendants

ORDER

The matter comes before the Court on a motion by plaintiffs pro se styled as a "Motion and Demand for Actual and Punitive Damage Judgment." Oral argument is dispensed with because it would not materially aid the court in the decision making process.

By Order dated February 28, 1997, defendant's motion to dismiss plaintiffs' complaint was granted and plaintiffs' motion for leave to amend their complaint was denied. By Order dated March 4, 1997, a further motion by plaintiffs was construed by the Court as a motion for reconsideration and denied. Thus, the matter was closed and three subsequent motions by plaintiffs were denied as moot by order dated March 11, 1997. Moreover, the Court found no basis for an alteration or amendment of judgment, pursuant to Rule 59(e), Fed. R. Civ. P., or relief from judgment, pursuant to Rule 60, Fed. R. Civ. P. Thus, the Court's February 28 and March 4 Orders were held to remain in full force and effect.

Accordingly, the matter is closed and plaintiffs' demand for judgment is DENIED.

This motion marks the sixth patently frivolous motion that plaintiffs have filed in this matter. The matter is closed and plaintiffs have no further recourse in this Court. Thus, plaintiffs are ENJOINED from filing further motions in this matter. The only filing that will be accepted from plaintiffs in this matter will be a notice of appeal to the United States Court of Appeals for the Fourth Circuit, provided that such notice of appeal is timely. Any further filings in this Court other than a notice of appeal is a violation of Rule 11, Fed. R., Civ. P., and the Court may award sanctions for such abusive practices.

The Clerk is directed to send copies of this Order to plaintiffs and all counsel of record.

/s/
United States District Judge
T.S. Ellis, III

Alexandria, VA
March 20, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Civil Action No. 96-1820-A

MARVIN D. TOM,
MARLA J. TOM,
Plaintiffs,
v.
JANET RENO, Attorney General
United States Department of
Justice, et. al.
Defendants.

ORDER

The matter comes before the Court on a motion by plaintiffs pro se to "dismiss all of [counsel for defendants'] motions filed so far with this District Court". Oral judgment is dispensed with because it would not materially aid the Court in the decision making process.

By Order dated February 28, 1997, defendants' motion to dismiss plaintiffs' complaint was granted and plaintiffs' motion for leave to amend their complaint was denied. Accordingly, the matter is now closed and no motions by counsel for defendants are pending. Plaintiffs' motion must therefore be construed as a motion for reconsideration of the February 28 Order. Because plaintiffs' moving papers disclose no good cause or reason for such reconsideration, the motion is DENIED.

Should plaintiffs wish to appeal the Court's February 28 Order, written notice of appeal must be filed with the Clerk of this Court within sixty (60) days of the date of that Order.

The Clerk is directed to send copies of this Order to plaintiffs and all counsel of record.

/s/
United States District Judge
T.S. Ellis, III

Alexandria, VA
March 4, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Civil Action No. 96-1820-A

MARVIN D. TOM,
MARLA J. TOM,
Plaintiffs
v.
JANET RENO, Attorney General
United States Department of
Justice, et. al,
Defendants

O R D E R

The matter came before the Court on defendants' motions (i) to substitute the United States as a defendant, and (ii) to dismiss plaintiffs' complaint. Plaintiffs pro se moved for leave to file an amended complaint.

For the reasons stated from the bench:
1) defendants' motion to substitute the United States as defendant is GRANTED; and
2) defendants' motion to dismiss plaintiffs' complaint is GRANTED; and
3) plaintiffs' motion for leave to file an amended complaint is DENIED.

Should plaintiffs wish to appeal, written notice of appeal must be filed with the Clerk of this Court within sixty (60) days of the date of this Order.

The Clerk is directed to send copies of this Order to plaintiffs and all counsel of record.

/s/
United States District Judge
T. S. Ellis, III

Alexandria, VA
February 28, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

Marvin D. Tom, et al

Case No. CA 96-1820

v.

Janet Reno, et al

SCHEDULING ORDER

A pretrial conference will be held in this action on Thursday, June 19, 1997, at 10:00 a.m.

All discovery must be concluded by Friday, May 30, 1997.

Unless a later time has previously been allowed, any defendant who has not filed an answer must do so within 11 days from the date of this order.

All motions, except for summary judgment, shall be noticed for hearing on the earliest possible Friday before the pretrial conference. Ten working days notice is required for motions to dismiss, for summary judgment, for patent claim construction, and for judgment on the pleadings. Non-dispositive motions must be filed and delivered by the Monday before the Friday for which noticed, with responses due not later than the Wednesday before the hearing.

Expert discovery shall be conducted as provided in Local Rule 26(D). Experts not properly identified, and for whom a report has not been timely provided, shall not testify at trial for any purpose.

Fed. R. Civ. P. 26(a)(3) disclosures must be made before the pretrial conference, and the parties must bring to the conference the disclosures and a list of the exhibits to be used at trial, a list of the wit-

nesses to be called at trial and a written stipulation of uncontested facts. The exhibits themselves or a copy should be exchanged with opposing counsel before the conference. Objections to exhibits must be filed within 10 days after the conference; otherwise the exhibits shall stand admitted in evidence. The original exhibits shall be delivered to the clerk as provided by Local Rule 79(A). Non-expert witnesses and exhibits not so disclosed and listed will not be permitted at trial except for impeachment or rebuttal, and no person may testify whose identity, being timely requested in discovery, was not disclosed in time to be deposed or to permit the substance of his knowledge and opinions to be ascertained.

Depositions, interrogatories, requests for documents and admissions, and answers and responses thereto, shall not be filed except on order of the court, or for use in this action in connection with a motion.

In non-jury cases, counsel should file with the clerk at the beginning of the trial written proposed findings of fact and conclusions of law.

The trial of this case will be set for a day certain, within 4-8 weeks of the pretrial conference.

/s/
United States District Judge

February 3, 1997
Alexandria, Virginia
This order is being mailed to local counsel only.

1/ This differs from prior scheduling order requirements. The original exhibits now should not be brought to the conference, but filed with the clerk one business day before trial.